

*United States Court of Appeals
for the Second Circuit*



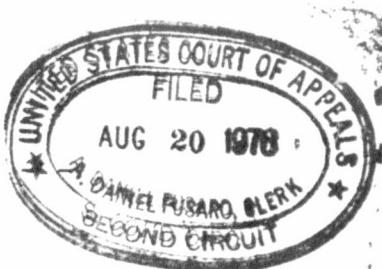
**APPELLEE'S BRIEF
AND
APPENDIX**

75-7682

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-7682



ROBERT CALHOUN, JR.,

Plaintiff-Appellant,

-against-

H. SPENCER KUPPERMAN, ESQ., CRAVATH, SWAINE & MOORE,
its agents and others, THACHER, PROFFITT, PRIZER,
CRAWLEY & WOOD, its agents and others, SKADDEN, ARPS,
SLATE, MEAGHER & FLOM, its agents, MICHAEL H. DIAMOND,
HENRY P. BAER, J. PHILLIP ADAMS, PEGGY L. KERR, and
others, FREEMAN, MEADE, WASSERMAN & SHARFMAN, its
agents and others,

Defendants-Respondents.

BPLS

BRIEF AND APPENDIX FOR DEFENDANT-RESPONDENT
THACHER, PROFFITT & WOOD

6

Robert S. Stitt,
Joan H. Hillenbrand,
Of Counsel.

THACHER, PROFFITT & WOOD

Pro Se

40 WALL STREET, NEW YORK, N. Y. 10005

PAGINATION AS IN ORIGINAL COPY

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Preliminary Statement

Plaintiff-appellant Robert Calhoun, Jr. ("plaintiff"), acting pro se, appeals from an order and judgment of the United States District Court for the Southern District of New York (Duffy, J.) dismissing the complaint because the plaintiff lacked standing to sue, and the complaint thus failed to state a claim upon which relief could be granted.

Question Presented

Did the District Court err in dismissing the complaint because the plaintiff lacked standing to bring this action?

Statement of the Case and Facts

The plaintiff, acting pro se, brought this action to recover damages of \$25,000,000 pursuant to 42 U.S.C. § 1983, 18 U.S.C. §§ 241 and 242, the Civil Rights Act of 1964 [42 U.S.C. §§ 2000 et seq.] and the Fourteenth Amendment. The plaintiff is the husband of Alice M. Calhoun who had previously brought an action against Riverside Search Institute ("Riverside") and Columbia University ("Columbia"), alleging racial discrimination because of their failure to promote her to the

position of assistant manager. [A-Complaint, Calhoun v. Riverside Research Institute] * The defendants-respondents herein ("defendants") are the attorneys and law firms who represented Mrs. Calhoun, Riverside and Columbia at various stages of that litigation. In particular, defendant Thacher, Proffitt & Wood (sued herein as "Thacher, Proffitt, Prizer, Crawley & Wood") represented Columbia.

Early in Mrs. Calhoun's lawsuit, the parties discontinued the action as to Columbia pursuant to a stipulation as ordered by Judge Tyler. [R-2; A-Docket Sheet, Calhoun v. Riverside] Ultimately, Mrs. Calhoun's action was also discontinued as to Riverside pursuant to the parties' stipulation as ordered by Judge Knapp. [A-Stipulation of Discontinuance, Calhoun v. Riverside] The discontinuance as to Riverside resulted from a conference held by Judge Knapp at which Mrs. Calhoun accepted a settlement of her claim for \$5,900. [R-5-6]

The gravamen of the plaintiff's complaint herein is that the defendants conspired in Mrs. Calhoun's lawsuit to harm him and his wife by causing "his wife

* Citations beginning with "A" refer to appellant's appendix; those with "R" refer to the appendix of respondent Thacher, Proffitt & Wood.

to lose the damages that were warranted in her action."

[R-1; R-7] Thus, plaintiff claims defendants deprived him of his civil rights. [R-1-2]

After the plaintiff moved for summary judgment and two of the defendants moved for dismissal of the complaint, Judge Duffy held a conference to discuss the plaintiff's allegations and the defendants' positions. At this conference the remaining defendants, including Thacher, Proffitt & Wood, joined in the motions to dismiss. By his order and opinion, dated November 11, 1975, Judge Duffy dismissed the complaint on the ground that the plaintiff lacked standing to bring the action, and denied the plaintiff's motion for summary judgment.

[R-4-7] The plaintiff appeals from that judgment.

Point I

The Complaint was Properly Dismissed

It is well-established that an individual generally may not sue for the deprivation of another's civil rights.

McGowan v. Maryland, 366 U.S. 420, 429 (1961);

Barrows v. Jackson, 346 U.S. 429 (1953);

O'Malley v. Brierley, 477 F.2d 785, 789 (3rd Cir. 1973);

Evain v. Conlisk, 364 F.Supp. 1188, 1190-91
(N.D. Ill. 1973), aff'd 498 F.2d 1403 (7th
Cir. 1974).

The plaintiff failed to allege any circumstances establishing the inapplicability of this rule. Accordingly, Judge Duffy properly found that only "Mrs. Calhoun is in a position to raise any wrongs done to her" and that the plaintiff lacked standing to bring this action.

[R-7]

The plaintiff's allegations, that the defendants and Judge Knapp were guilty of misdeeds and fraudulent conduct, are completely negated by the transcript of the settlement conference held by Judge Knapp in Mrs. Calhour's action. [R-5-6] In essence then, the plaintiff's complaint represents nothing more than his dissatisfaction with the settlement willingly agreed to by his wife, and was properly dismissed.

Conclusion

The decision and order below, dismissing the complaint should be affirmed.

Dated: New York, New York
August 10, 1976

Respectfully submitted,
Tnacher, Proffitt & Wood

Pro Se

Robert S. Stitt,
Joan H. Hillenbrand,
Of Counsel.

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

ROBERT CALHOUN JR., Plaintiff

vs

DOCKET NUMBER _____

H. SPENCER KUPPERMAN ESQ., Defendants

CRAVATH, SWAINE, & MOORE its agents and others.

THACHER PROFFITT, PRIZER CRAWLEY and WOOD its agents and others.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM its agents Michael H. Diamond, Henry P. Baer, J. Phillip Adams, Peggy L. Kerr and others.

FREEMAN, MEADE, WASSERMAN, & SHARFMAN its agents and others.

COMPLAINT

Jurisdiction of this Court is invoked pursuant to the Fourteenth Amendment to the Constitution Of The United States Of America and the Civil Rights Act Of 1964 As Amended. This is a suit in equity with pleas for restraining and injunctive relief. This action is brought under 42 USC-1983 and 18 USC-241 and 242 reference case Greenwood vs Peacock 384 US 808, S Ct. 1800. This Court is invoked to secure redress and protection of the plaintiff's Constitutional and Civil Rights.

II

The plaintiff claims that the defendants did conspire together in the litigation of a Civil Rights action (71 CIV 2734 Alice M. Calhoun vs Riverside Research Institute and Columbia University) to do harm to him and his wife. The defendants are charged with carrying out a conspiracy that caused his wife to lose the damages that were warranted in her action. The loss due to this conspiracy did inflict personal injury and financial losses upon the plaintiff and his wife. The professional career of the plaintiff's wife has been permanently damaged and their financial indebted increased. The tranquillity of their home and marriage has been destroyed and the family harmony has been discorded by this cruel and evil hoax perpetrated by the defendants. The plaintiff is suffering mental anguish, aggravation, loss of services of his wife as well as the diminution of affection of his wife and his children.

III

The plaintiff further claims that this conspiracy was pre-meditated with intent to harm his wife and himself. This scheme was carried out under color of the United States District Court at Foley Square, New York. The defendants did violate the Rules Of Civil Procedure For The United States District Courts and the defendants did willfully violate the Canons Of Legal Ethics. The violations of

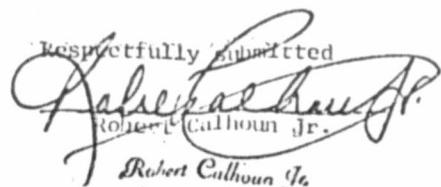
these fundamental standards of law and the flagrant disregard for their client's Constitutional and Civil Rights are reprehensible, contemptuous, and inexcusable. This conduct by the defendants cast discredit and suspicion on this Court; it puts scorn on the legal profession and it stigmatizes the entire judicial system. The defendants have abandoned their duty and violated their public trust; so in order that justice is served, this duty and trust should be removed from their dominion forever. The conspiracy that has been executed by these pretenders to the BAR along with their contemporaries makes a mockery of our Constitution, the Courts and the legal and humane doctrines of our Democracy. These acts by the defendants can only reveal their true nature and motives of deceit, selfish greed, untrust worthy, and irresponsible. These acts did deny the plaintiff the equal protection of the law that is set forth in our Constitution. Plaintiff's right to be secure in his home has been abridged and his right to privacy has been invaded. The plaintiff begs this Court for damages for his suffering and the sufferings of his family caused by defendants actions. Plaintiff further pleads that this Court restrain and prohibit the defendants from ever practicing such conspiracy again.

IV

The plaintiff is pleading for twenty-five million dollars for the personal injury inflicted upon his family. The plaintiff ask for this justice because the defendants stand to gain from the abortion of the Civil Rights case. The plaintiff further pleads for triple the personal damages for the deliberate malicious pre-meditated turpitude. We also ask that the Court give reasonable consideration for the legal cost of this petition. Plaintiff now begs in behalf of the defendants to ask the Court to give swift and emphatic justice to them so as to alleviate their long suffering. Swift and decisive justice in this case will serve to remove the taint that has been thrust over this Court, reinforce the Constitution that has been so badly breached by the defendants, and lift some of the suspicion from the legal profession.

V

We beg the Court to consider not just the personal injury inflicted upon the plaintiff but consider too the taint on the Court, the doubt and suspicion on the legal community, and the challenge that this present to our Constitution. The defendants have brazenly breached the Constitution, ignored the Rules Of Civil Procedure, and willfully defied the Cannons Of Legal Ethics, all beyond the limits of good conscience and common decency. This makes it justifiably right that this Court should protect itself, the legal profession on which it depends, and the Constitution from which it is derived. We submit our fervent and humble plea for your most honorable judgement.

Respectfully submitted

Robert Calhoun Jr.
Robert Calhoun Jr.

Robert Calhoun Jr. did come before me swearing and attesting to the statements made in this Complaint on the 28th day of July, 1975
I set my seal and signature hereto:

Robert Calhoun Jr.
111-11 132nd St.
Ozone Park 20, N.Y.
Annaica 9-1274

signature of notary

WILLIAM MULLER
COMMISSIONER OF DEEDS
CITY OF NEW YORK 4-1293
Certificate filed in New York County
Commission Expires March 1, 1976

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT CALHOUN, JR.,

Plaintiff,

OPINION AND ORDER

-against-

75 Civ. 3748

H. SPENCER KUPPERMAN, ESQ.,
et al.,

Defendants.

APPEARANCES

ROBERT CALHOUN,
Pro Se, Plaintiff

H. SPENCER KUPPERMAN,
Pro se, Defendant

CRAVATH, SWAINE & MOORE
Pro Se, Defendants

THACHER, PROFITT, PRIZER, CRAWLEY & WOOD
Pro Se, Defendants

SKADDEN, ARPS, SLATE, LEAGHER & FLOM
Pro Se, Defendants and for
Defendants MICHAEL H. DIAMOND, HENRY P. BAER,
J. PHILLIP ADAMS, PEGGY L. FERP

FREEMAN, MEADE, WASSERMAN & SHARFMAN
Pro Se, Defendants

KEVIN THOMAS DUFFY, D.J.

This is an action brought under 42 U.S.C. § 1983,
18 U.S.C. §§ 241, 242, the Civil Rights Act of 1964 and

15

Nov 13 1975
S.D.N.Y.
U.S. DISTRICT COURT
3005

the Fourteenth Amendment. Robert Calhoun, Jr., the sole plaintiff in this action, is the husband of Alice M. Calhoun. Mrs. Calhoun had previously brought an action against Riverside Research Institute ("Riverside") and Columbia University ("Columbia") alleging discrimination based on race in the defendants' failure to promote her to the post of assistant manager of the "AMRAD Data Reduction group" at its Electronics Research Laboratories. Calhoun v. Riverside Research Institute, 71 Civ. 2734 (S.D.N.Y.). Defendants in the action before me are the attorneys and law firms who represented Mrs. Calhoun, Riverside and Columbia at various stages of that litigation.

At some point in the earlier suit, Columbia was discontinued as a defendant. The claim against Riverside resulted in a "disputed settlement agreement" of \$3,000 to cover Mrs. Calhoun's out of pocket litigation expenses. Attorneys' fees were not included in this figure since counsel for Mrs. Calhoun had undertaken the case on a pro bono basis.

The "disputed settlement" was successfully challenged by Mrs. Calhoun at a hearing before Judge Knapp. The Judge expressed a willingness to act as a catalyst to bring the parties together on a new agreement:

MPS. CALHOUN: Your Honor Mr. Calhoun is criticizing me for negotiating a settlement --

THE COURT: Mr. Calhoun is not attacking anybody. Mr. Calhoun is expressing his wishes. My point is, Mr. Calhoun, we are all here, we are all present, and why don't we try to settle it right now?

MR. CALHOUN: Right.

THE COURT: So let us not worry about who did what in the past.

Following a discussion off the record, a settlement figure of \$5,900 was agreed upon. The agreement was placed on the record:

THE COURT: I take it you represent that this settlement takes into account any claims you have against Riverside Research Institute?

MRS. CALHOUN: Yes, I am under the impression that once you have settled, there is no recourse.

THE COURT: You represent to me that you have no claims of any sort against Riverside Research or anybody there?

MRS. CALHOUN: Yes.

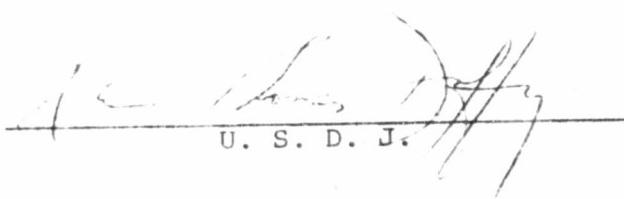
THE COURT: That is not taken care of by this settlement?

MRS. CALHOUN: I do.

Mr. Calhoun now alleges that the defendants conspired in the earlier litigation to do harm to him and his wife by causing "his wife to lose the damages that were warranted in her action." It is the general rule that an individual cannot sue for the deprivation of another's civil rights. McGowan v. Maryland, 366 U.S. 420, 429 (1961); Eavain v. Conlisk, 364 F.Supp. 1188 (N.D.Ill.), aff'd, 498 F.2d 1403 (7th Cir. 1974). Only Mrs. Calhoun is in a position to raise any wrongs done to her. The statement that Mr. Calhoun was in turn harmed does not cure this defect.

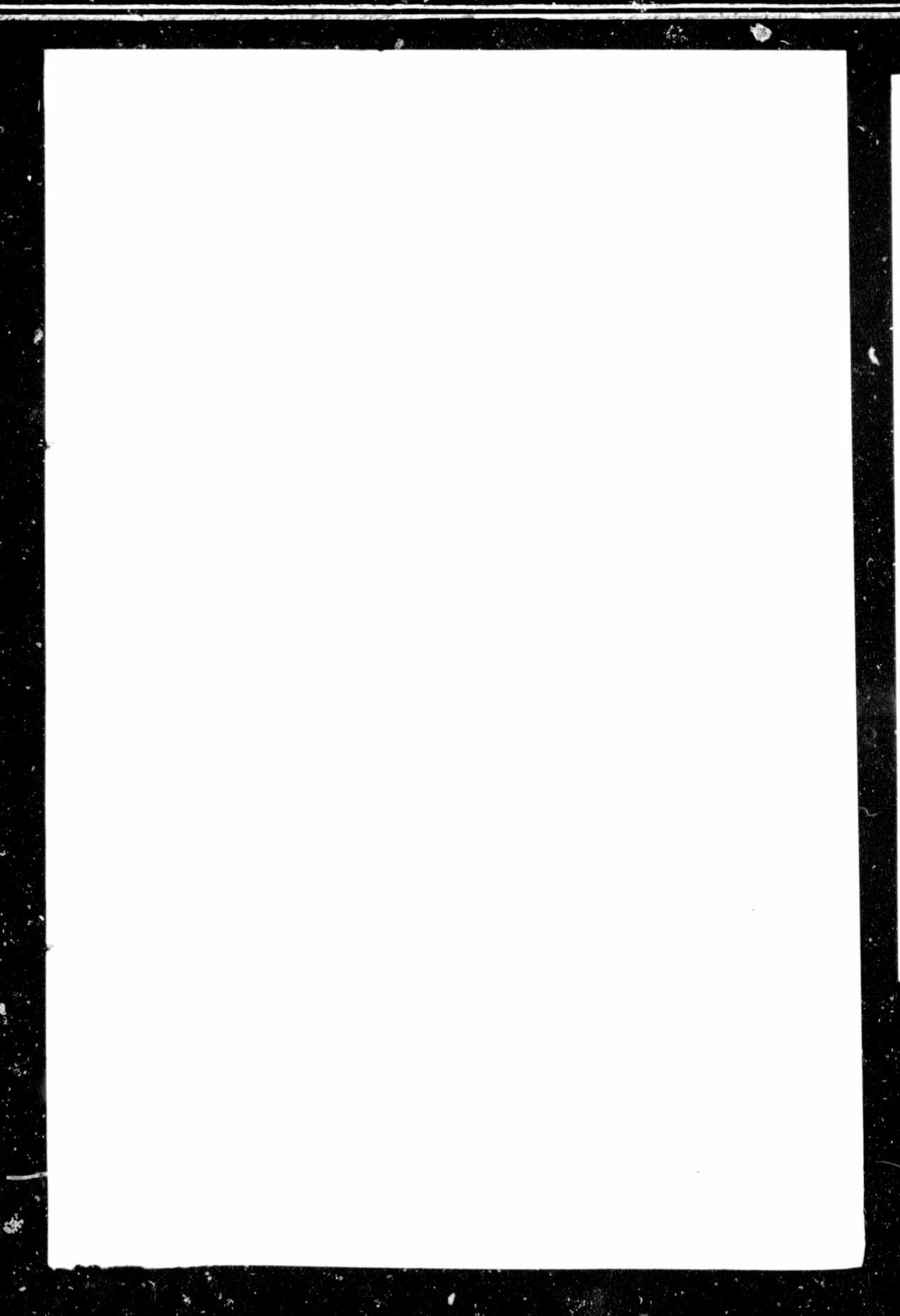
Since plaintiff lacks standing, the complaint fails to state a claim upon which relief can be granted. The action, therefore, must be dismissed as to all defendants. Plaintiff's motions for summary judgment and other relief are thus mooted.

SO ORDERED.


U. S. D. J.

Dated: New York, New York

November / , 1975.



C 321—Affidavit of Service of Papers by Mail.
Affirmation of Service by Mail on Reverse Side.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Index No. 75-7682

ROBERT CALHOUN, JR.,

Plaintiff -
against
Appellant,
N., ESQ., CRAVATH, SWAINE

Defendant -
Respondents.

*AFFIDAVIT OF SERVICE
BY MAIL*

STATE OF NEW YORK, COUNTY OF NEW YORK

SS.:

The undersigned being duly sworn, deposes and says:

*Deponent is not a party to the action, is over 18 years of age and resides at 129-01 107 Avenue,
Richmond Hill, New York 11419*

That on August 10, 1976 deponent served the annexed Brief and Appendix for defendant-respondent, Thacher, Proffitt & Wood on Robert Calhoun, Jr., pro se attorney(s) for in this action at 111-11 132 Street, Jamacia, N.Y. 11420 the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me
August 10, 1976

Elexa Polozie
The name signed must be printed beneath

The name signed must be printed beneath

ELENA POLIZZI

Bru & Copland

ERIC K. COPLAND
Notary Public, State of New York
No. 31-4524971
Qualified in New York County
Commission Expires March 30, 1978